§ 250.301 Scope of investment authority and notification requirement under the Bank Service Corporation Act.

Summary. (a) The authority of State member banks under the Bank Service Corporation Act to invest in bank service corporations is limited to investments in corporations that perform ''bank services'' solely.

(b) A State member bank is required by the Act to notify the Board only of the performance of ''bank services'' for it.

(c) ''Bank services'' will not usually be regarded as including legal, advisory, and administrative services, such as transportation or guard services.

Text (a) Section 2(a) of the Bank Service Corporation Act (12 U.S.C. 1861–65) provides that ''no limitation or prohibition otherwise imposed by any provision of Federal law exclusively relating to banks shall prevent any two or more banks from investing not more than 10 per centum of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation.'' This 10 percent investment ceiling applies to loans and other advances of funds, as well as the purchase of stock. The Act, however, does not authorize a State bank to invest in a bank service corporation if the bank is not permitted to do so under the applicable State law.

(b) *Bank service corporation* is defined in section 1(c) of the Act to mean ''a corporation organized to perform bank services for two or more banks, each of which owns part of the capital stock of such corporation, and at least one of which is subject to examination by a Federal supervisory agency.'' Section 4 of the Act states that ''no bank service corporation may engage in any activity other than the performance of bank services for banks.'' Thus, the investment authority created by section 2(a) is limited to corporations that are engaged solely in the provision of ''bank services'' to banks, as that term is defined in the Act.

(c) In addition to its grant of investment authority, the Act also requires State member banks to notify the Board within 30 days of the execution of a contract for ''bank services'' or the actual provision of such services, whichever occurs first. Moreover, the Act authorizes the Board to regulate and examine the performance of ''bank services.'' Thus, the scope of the Act's notification and examination requirements also is limited to ''bank services.''

(d) The term *bank services* is defined in section 1(b) of the Act to mean ''services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.''

(e) Bearing importantly upon the meaning of *bank services* is the following quotation from the Report of the Senate Committee on Banking and Currency:

> The authority to examine and supervise banks is broad and must be vigorously exercised. At the same time sound discretion must be used. Banks have always employed others to do many things for them, and they will have to continue to do so, and the bill is not intended to prevent this or to make it more difficult. For example, banks have employed lawyers to prepare trust and estate accounts and to prosecute judicial proceedings for the settlement of such accounts. Banks have employed accountants to prepare earnings statements and balance sheets. Banks have employed public relations and advertising firms. And banks have employed individuals or firms to perform all kinds of administrative activities, including armored car and other transportation services, guard services and, in many cases, other mechanical services needed to run the bank's buildings. It is not expected that the bank supervisory agencies would find it necessary to examine or regulate any of these agents or representatives of a bank, except under the most unusual circumstances. The authority is intended to be limited to banking functions as such.
>
> (S. Rep. No. 2105, 87th Cong. 3 (1962)).

(f) On the basis of the Act's definition of *bank services,* the limitation contained in section 4 of the Act, and the preceding quotation from the Act's legislative history, it is apparent that the term *bank services* is essentially limited to clerical and similar services. For example, the term would not usually be regarded as including legal, advisory,

and administrative services, such as transportation or guard services.

(g) Thus, State member banks generally may rely on the Act to justify investment only in a corporation that is engaged solely in performing one or more of the services contained in the definition of *bank services* in section 1(b), or a service similar to one of those services, and only if those services are provided solely to banks. Investment in a corporation providing any other services, such as the type of services described in the above quotation from the Act's legislative history, generally is not permitted on the basis of this Act, unless such services are legitimately incidental to the provision of *bank services* by that corporation.

(h) Since the notification required by section 5 of the Act, as amended, also is based on the provision of *bank services,* such notification need only be provided with regard to the provision of one or more of the services enumerated in section 1(b) of the Act or a service similar to one of those services.

[44 FR 12969, Mar. 9, 1979]

§ 250.302 Applicability of Bank Service Corporation Act to bank credit card service organization.

Summary. Although a non-profit, no-stock service organization in which no bank has made an investment is not a *bank service corporation* as defined in the Bank Service Corporation Act, that organization's credit card servicing activities are *bank services* as defined in the Act and thus subject to the notification requirement of section 5 of the Act.

Text. (a) The Board of Governors has considered whether the Bank Service Corporation Act (12 U.S.C. 1861–1865), is applicable where a bank credit card plan of a State member bank and other banks used the facilities of a non-profit, no-stock service organization.

(b) The functions of the service organization include the following: (1) Performing cardholder accounting for participating banks; (2) developing information concerning each credit card and holder, including such holder's current balance owing to the card issuing bank and the amount of such balance that is delinquent; (3) assisting in procedures relating to the presentation and settlement of drafts and credit memoranda; (4) developing procedures relating to credit card security control; (5) upon telephonic request, advising merchants and participating banks respecting credit authorizations above certain specified limits; and (6) compiling lists of participating merchants.

(c) The Board expressed the view that because the service organization has no stock and the State member bank does not otherwise *invest* therein by ''the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment'' (section 1(d) of the Act), the service organization is not a ''bank service corporation'' within the meaning of section 1(c) of the Act.

(d) However, the Board concluded that the functions described above do constitute *bank services* as defined in section 1(b) of the Act. Accordingly, the State member bank is required to notify the Board (through the appropriate Federal Reserve Bank) of the performance of the services for the bank in accordance with section 5 of the Act.

[44 FR 12970, Mar. 9, 1979]

INTERPRETATIONS OF SECTION 32 OF THE GLASS-STEAGALL ACT

§ 250.400 Service of open-end investment company.

An open-end investment company is defined in section 5(a)(1) of the Investment Company Act of 1940 as a company ''which is offering for sale or has outstanding any redeemable security of which it is the issuer.'' Section 2(a)(31) of said act provides that a *redeemable security* means ''any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.''

It is customary for such companies to have but one class of securities, namely, capital stock, and it is apparent that the more or less continued process of redemption of the stock issued by